

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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AUG 18 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	DA 93-930
	)	
800 Data Base Access Tariffs and	)	CC Docket No. 93-129
the 800 Service Management System	)	
Tariff	)	

To: Acting Chief, Common Carrier Bureau

PETITION FOR CLARIFICATION OR,  
IN THE ALTERNATIVE, RECONSIDERATION

U S WEST Communications, Inc. ("USWC"), through counsel, hereby requests that the Common Carrier Bureau ("Bureau") clarify that its decision in the Order Designating Issues for Investigation in the above-captioned docket,<sup>1</sup> to the effect that, should a carrier choose to justify its costs for 800 service via a computer model in this proceeding, it must disclose the model itself "on the record,"<sup>2</sup> does not constitute a final order or decision denying proprietary and confidential treatment to the Switching Cost Model (or "SCM Model" or "Model") utilized by USWC to develop such costs in support of its own 800 tariff. Should it be determined that the Order did make a final decision on this issue, we respectfully request that it be reconsidered.

<sup>1</sup>See In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff, CC Docket No. 93-129, Order Designating Issues for Investigation, DA 93-930, rel. July 19, 1993 ("Order").

<sup>2</sup>Id. at ¶ 29.

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The Order stated that: "[P]rice cap [local exchange carriers] LECs using computer models to develop costs in their direct cases must disclose those models on the record if their justification for their rates is based on the use of the model."<sup>3</sup> This decision was predicated on several factual assumptions:

- 1) That some LECs developed cost information without the use of such models.<sup>4</sup>
- 2) That no confidential third-party information would be compromised by release of the models.<sup>5</sup>

Based upon ex parte filings of other parties,<sup>6</sup> it now appears that the first assumption is incorrect. All affected LECs rely on computer models for their cost analysis. In the case of USWC, as is documented in the attached affidavit of Barbara H. Stock, it is not possible to calculate costs for vertical features without using the USWC SCM Model, and would be extremely difficult to calculate other costs without the Model.<sup>7</sup> As Ms. Stock's affidavit also points out, release of the USWC SCM Model would also compromise proprietary information provided to USWC in confidence by switch manufacturers.<sup>8</sup> More significantly

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<sup>3</sup>Id.

<sup>4</sup>Id. at ¶ 28.

<sup>5</sup>Id. at ¶ 29.

<sup>6</sup>Ex Parte Statement of James F. Britt, Bell Communications Research, Inc., filed August 3, 1993.

<sup>7</sup>Affidavit of Barbara H. Stock, Attachment A, at 6.

<sup>8</sup>Id. at 2.

from USWC's perspective, the SCM Model contains confidential USWC financial information and is a USWC trade secret shielded from disclosure.<sup>9</sup> Release of the Model to the public would cause economic harm to USWC and would effectuate a compensable Fifth Amendment taking of USWC's property.

In fact, as is pointed out by Ms. Stock in her affidavit, the SCM program addressed in the Order raises the same factual issues as were raised in the proceeding concerning the basic SCM Model.<sup>10</sup> In that proceeding, the Bureau ruled that the SCM Model (and the Bellcore SCIS Model) were confidential and entitled to protection against public disclosure.<sup>11</sup> The Federal Communications Commission ("FCC") itself subsequently affirmed that conclusion in denying a Freedom of Information Act request for the models,<sup>12</sup> a decision affirmed by a United States District Court<sup>13</sup> and currently pending before the United States Court of Appeals for the D.C. Circuit.<sup>14</sup>

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<sup>9</sup>5 U.S.C. § 552(b)(4).

<sup>10</sup>Affidavit of Barbara H. Stock, Attachment A, at 2, 5-6.

<sup>11</sup>See Commission Requirements for Cost Support Material to be Filed with ONA Access Tariffs, 7 FCC Rcd. 1526, 1531-38 ¶¶ 27-73 (1992) ("ONA Proceeding").

<sup>12</sup>Allnet Communication Services, Inc., 7 FCC Rcd. 6329-31 ¶¶ 4-20 (1992).

<sup>13</sup>Allnet Communication Services, Inc. v. F.C.C., 800 F. Supp. 984, 987-90 (D.D.C. 1992).

<sup>14</sup>Allnet Communications Services, Inc. v. F.C.C., No. 92-5351 (D.C. Cir. Sept. 25, 1992). This case is currently scheduled for oral argument on February 5, 1994.

As was the case with the basic SCM Model in the ONA Proceeding, USWC is willing to provide the SCM Model to the FCC in confidence.<sup>15</sup> Our concern is that the Order not be read as having determined the confidentiality issue in advance, so that USWC, by filing the SCM Model at all, might be deemed to have waived any claim of confidentiality.

As a general rule, designation orders are interlocutory in nature and not subject to petitions for reconsideration.<sup>16</sup> However, interlocutory rulings which would demand discovery in violation of a claim of privilege are subject to administrative appeals,<sup>17</sup> and interlocutory rulings in a judicial context which compromise privileged or confidential information are subject to reversal via extraordinary writ.<sup>18</sup> In short, if the Order really does require that USWC publicly disclose its confidential SCM Model, then it is a final order and a petition for reconsideration would be appropriate.

We read the Order as directing that USWC justify its tariffs, and not as foreclosing the possibility that USWC can

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<sup>15</sup>USWC will extend all reasonable accommodations to parties in this matter so long as the confidentiality of the SCM Model is not compromised.

<sup>16</sup>47 C.F.R. § 1.106(a); ITT World Communications, Inc., 86 F.C.C. 2d 31, 32-33 ¶¶ 3-4 (1981); International Record Carriers' Communications, 46 F.C.C. 2d 968, 969-71 ¶¶ 4-8 (1974). They are, however, subject to FCC reconsideration on its own motion. 47 C.F.R. § 1.117.

<sup>17</sup>47 C.F.R. § 1.301(a)(2).

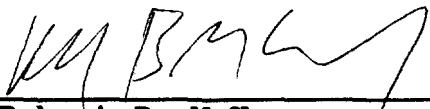
<sup>18</sup>In Re Von Bulow, 828 F.2d 94, 98 (2d Cir. 1987); Bogosian v. Gulf Oil Corp., 738 F.2d 587, 591-92 (3d Cir. 1984); United States v. RMI Co., 599 F.2d 1183, 1185-86 (3d Cir. 1979).

make a proper showing sufficient to warrant issuance of a protective order or other protective device such as was utilized in the ONA Proceeding. We plan to proceed in this fashion. If, however, the Order is final in this regard, we hereby respectfully request that it be reconsidered on the basis of the attached affidavit.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By:

  
Robert B. McKenna  
1020 19th Street, N.W.  
Suite 700  
Washington, D.C. 20036  
(303) 672-2861

Its Attorney

Of Counsel,  
Laurie J. Bennett

August 18, 1993

**Attachment A**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

800 Data Base Access Tariffs  
and the 800 Service Management  
System Tariff

DA 93-90

CC Docket No. 93-129

AFFIDAVIT OF BARBARA H. STOCK

STATE OF COLORADO

County of Denver

Barbara H. Stock, being first duly sworn, deposes and says:

I.

She is Manager - Switching Cost Modeling of U S WEST Communications, Inc. ("USWC"), and has personal knowledge of the facts in her affidavit.

II.

The Switching Cost Model SS7 (SCM SS7) is a computer model that is used by USWC to estimate recurring switching costs of services provided by USWC - specifically the 800 data base and other Signalling System 7 based services.

### III.

SCM SS7 employs proprietary and original programming that is not known by persons outside the telecommunications business. Also, inputs to the model include data on switching equipment that USWC is contractually obligated to keep secret by reason of agreements with its vendors of such equipment: AT&T Technologies, Northern Telecom, Inc., Ericsson Network Systems and Digital Equipment Corporation. Some of the proprietary and original programming would, if disclosed, allow one or more of the switch vendors to learn information about their competitors' products that would not otherwise be available. Some of the outputs of the model, if disclosed, would give one or more of the switch vendors otherwise unavailable information on their competitor's pricing strategies. The supporting documentation and inputs would allow construction of a model that duplicates the functions of SCM SS7. SCM SS7 is another module to the SCM program which was the subject of investigation concerning USWC's pricing of Open Network Architecture Services.

### IV.

SCM SS7's proprietary and original programming, supporting documentation and inputs are known, within USWC, only to a select group that is responsible for the design and maintenance of that system.



## V.

SCM SS7 is the model for apportioning the recurring costs of the SS7 signalling network. The basic SCM accomplishes the same task for the voice and data network. Release of the programming, supporting documentation, and inputs of the SCM SS7 would compromise the integrity of the entire SCM model, not just the module dedicated to SS7. Such release would also permit calculation of the confidential vendor switch information to the same degree as would release of the basic SCM model.

## VI.

USWC diligently protects the secrecy of SCM, including SCM SS7, its inputs and documentation. Numbered copies are provided to authorized users who sign agreements restricting their use of this information. The number of authorized users is strictly controlled, and none of such users has access to the source or compiled code. All persons who have access to any information about SCM, including the system administrator and authorized programmer, are required to sign annually, as a condition of continued employment, an agreement binding them to maintain the secrecy of company information, including the information about SCM. The personal computers on which SCM operates, and the physical diskettes containing the software and

the written source code, are kept in secure, access-controlled buildings. The source code is kept in a locked cabinet.

## VII.

SCM, including SCM SS7, is quite valuable to USWC, and would be valuable to USWC's competitors if they obtained access to it. SCM is a valuable tool in USWC's pricing process. SCM allows USWC to calculate the recurring switching cost components of USWC's products and services. These cost components are used to determine the price floors in determining USWC's service prices. SCM, without the secret inputs consisting of pricing data from USWC's vendors, would also be a valuable property for sale to other firms that require accurate costing of switching services.

SCM, if provided to USWC's competitors, would also be valuable to such competitors. SCM would allow the competitors to predict, with far greater accuracy than they could without the model, USWC's price floors on any given competitive service that involves switching. SCM's documentation, manuals and inputs would, if disclosed to USWC's competitors, allow them to duplicate the results of the SCM model's calculation.

## VIII.

It would be quite difficult for others properly to acquire this same information. Information of USWC's network requirements, initial cost of investment, investment plans, and

allocations of cost among services are not known elsewhere. The programming that integrates some widely accepted and applied principles of costing with these elements is itself not capable of being replicated without knowledge of the secret USWC information listed above.

#### IX.

Disclosure of SCM, its documentation, manuals and inputs would work a clearly defined and serious injury on USWC. The model is capable, after modification to substitute another user's inputs for the secret USWC input information, of providing cost calculations for others. USWC may also market this asset, minus the secret USWC inputs, to other firms in the future. Disclosure of the model would destroy the market value of this asset. Disclosure with the secret USWC inputs would also allow USWC's competitors in the telecommunications business to predict more accurately USWC's prices on any competitive services which involve switching. Disclosure of the documentation, manuals and inputs would allow USWC's competitors to duplicate the function of the model, thereby also destroying its market value and also effectively disclosing USWC's costs to USWC's competitors.

#### X.


I have read footnote 24 of the FCC's July 19, 1993 Order Designating Issues for Investigation, in which it is stated that

LECs can calculate 800 data base costs without use of the switching model. It is my opinion that calculation of most 800 data base costs by USWC without use of the SCN SS7 model would be extremely difficult and expensive. Calculation of vertical feature costs without use of the model would, in my opinion, be impossible. In either case, even if a method of calculating 800 data base costs without use of the SCN SS7 would be devised, disclosure of this data would still entail the risk of compromising the proprietary switch information currently used in the input to the model.



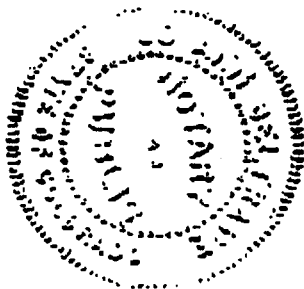
Barbara H. Stock

BEFORE ME came this 29th day of July, 1993, Barbara H. Stock, who being first duly sworn, stated that the facts in the foregoing Affidavit were true.



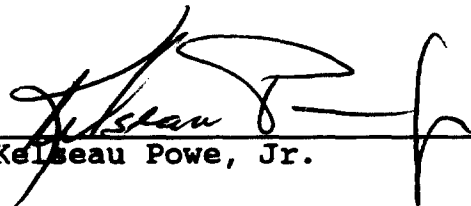
JOHN BALTRAME  
NOTARY PUBLIC in and for the  
State of Colorado, residing at  
1801 California Street, #4700,  
Denver, CO 80202.

My commission expires 12/18/93



**CERTIFICATE OF SERVICE**

I, Kelseau Powe, Jr., do hereby certify that on this 18th day of August, 1993, I have caused a copy of the foregoing **PETITION FOR CLARIFICATION OR, IN THE ALTERNATIVE, RECONSIDERATION** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.

  
Kelseau Powe, Jr.

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**\*Via Hand-Delivery**

(CC93-129/BM/lh)  
Update: 8/18/93 w/042893 Order

\*Tariff Division  
Tariff Review Branch  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554  
(2 Copies)

\*Christopher J. Trentrup  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

\*Kathleen B. Levitz  
Federal Communications Commission  
Room 500  
1919 M Street, N.W.  
Washington, DC 20554

\*Colleen Boothby  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

\*Gregory J. Vogt  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

\*Mark Uretsky  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

\*Judith A. Nitsche  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

\*Kathleen Abernathy  
Federal Communications Commission  
Room 826  
1919 M Street, N.W.  
Washington, DC 20554

\*Steven Funkhouser  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

\*Peggy Reitzel  
Federal Communications Commission  
Room 544  
1919 M Street, N.W.  
Washington, DC 20554

\*Gary Phillips  
Federal Communications Commission  
Room 544  
1919 M Street, N.W.  
Washington, DC 20554

William A. Blase, Jr.  
Southwestern Bell  
Suite 1000  
1667 K Street, N.W.  
Washington, DC 20006

\*International Transcription  
Services  
Suite 140  
2100 M Street, N.W.  
Washington, DC 20037

James L. Norris  
James F. Britt  
Bellcore  
LCC 2E-243  
290 West Mt. Pleasant Avenue  
Livingston, NJ 07039

\*Tom Quaile  
Federal Communications Commission  
Room 518  
1919 M Street, N.W.  
Washington, DC 20554

Gail L. Polivy  
GTE Service Corporation  
Suite 1200  
1850 M Street, N.W.  
Washington, DC 20036

James P. Tuthill  
Betsy S. Granger  
Theresa L. Cabral  
Nancy C. Woolf  
Pacific/Nevada Bell  
Room 1525  
140 New Montgomery Street  
San Francisco, CA 94105

Roy L. Morris  
Allnet Communication Services  
Suite 500  
1990 M Street, N.W.  
Washington, DC 20036

James L. Wurtz  
Pacific/Nevada Bell  
1275 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Jay C. Keithley  
United Telephone Companies  
Suite 1100  
1850 M Street, N.W.  
Washington, DC 20036

Craig T. Smith  
United Telephone Companies  
P.O. Box 11315  
Kansas City, MO 64112

Alfred Winchell Whittaker  
Kirkland & Ellis  
Suite 1200  
655 Fifteenth Street, N.W.  
Washington, DC 20005

Cindy Z. Schonhaut  
Metropolitan Fiber Systems, Inc.  
Suite 300  
3000 K Street, N.W.  
Washington, DC 20007

Carol R. Schultz  
MCI Telecommunications Corporation  
1801 Pennsylvania Avenue, N.W.  
Washington, DC 20006

James B. Gainer  
Ann Henkener  
PUC of Ohio  
180 East Broad Street  
Columbus, OH 43266

Henry D. Levine  
Mary K. O'Connell  
Levine, Lagapa & Block  
Suite 602  
1200 Nineteenth Street, N.W.  
Washington, DC 20036

Joseph P. Markoski  
David Alan Nall  
Kerry E. Murray  
Squire, Sanders & Dempsey  
P.O. Box 407  
201 Pennsylvania Avenue, N.W.  
Washington, DC 20044

Michael F. Brecher  
Terri B. Natoli  
Donelan, Cleary, Wood & Maser, P.C.  
Suite 850  
1275 K Street, N.W.  
Washington, DC 20005-4078

Ward W. Wueste, Jr.  
Richard McKenna  
GTE Service Corporation  
P.O. Box 152092  
Irving, TX 75015-2092

Francine J. Berry  
R. Steven Davis  
American Telephone and Telegraph  
Company  
Room 3244J1  
295 North Maple Avenue  
Basking Ridge, NJ 07920



Leon M. Kestenbaum  
Norino T. Moy  
Sprint Communications Company  
Suite 1110  
1850 M Street, N.W.  
Washington, DC 20036

Eric Fishman  
Sullivan & Worchester  
1025 Connecticut Avenue, N.W.  
Washington, DC 20036

Genevieve Morelli  
Competitive Telecommunications  
Association  
Suite 220  
1140 Connecticut Avenue, N.W.  
Washington, DC 20036

David S. Torrey  
Patrick A. Lee  
New England Telephone and Telegraph  
Company and New York Telephone  
Company  
120 Bloomingdale Road  
White Plains, NY 10605

Danny E. Adams  
Jeffrey S. Linder  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, DC 20006

Jeffrey W. Reynolds  
Sugar Land Telephone  
14141 Southwest Freeway  
Sugar Land, TX 77487

Catherine R. Sloan  
LDDS Communications, Inc.  
Suite 400  
1825 Eye Street, N.W.  
Washington, DC 20006

M. E. King, Jr.  
Nevada Bell  
Room B-132  
645 East Plumb Lane  
P.O. Box 11010  
Reno, NV 89520

Andrew D. Lipman  
Richard M. Rindler  
Swidler & Berlin, Chartered  
Suite 300  
3000 K Street, N.W.  
Washington, DC 20007

John C. Litchfield  
Ameritech Services  
Location 4F08  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025

Ronald W. Barkby  
Centel Telephone Companies  
8745 West Higgins Road  
Chicago, IL 60631

James S. Blaszak  
Francis E. Fletcher, Jr.  
Gardner, Carton & Douglas  
Suite 900 - East Tower  
1301 K Street, N.W.  
Washington, DC 20005

Robert A. Mazer  
Nixon, Hargrave, Devans & Doyle  
Suite 800  
One Thomas Circle  
Washington, DC 20005

Bob F. McCoy  
Joseph W. Miller  
John C. Gammie  
P.O. Box 2400-Suite 3600  
One Williams Center  
Tulsa, OK 74102

Richard A. Askoff  
National Exchange Carrier  
Association  
100 South Jefferson Road  
Whippany, NJ 07981

Michael L. Glaser  
Hopper & Kanouff, P.C.  
Suite 200  
1610 Wynkoop  
Denver, CO 80202

Emmanuel Staurulakis  
John Staurulakis, Inc.  
6315 Seabrook Road  
Seabrook, MD 20706

William Page Montgomery  
Economics and Technology, Inc.  
One Washington Mall  
Boston, MA 02108-2603

Randall B. Lowe  
Jones, Day, Reavis & Pogue  
1450 G Street, N.W.  
Washington, DC 20005-2088

Heather Burnett Gold  
Association for Local Tele-  
communications Services  
Suite 1050  
1150 Connecticut Avenue  
Washington, DC 20036

Alltel Corporation  
One Allied Drive  
Little Rock, AR 72202

Dunkirk and Fredonia Telephone  
Company  
40 Temple Street  
P.O. Box 209  
Fredonia, NY 14063

Century Telephone Company  
P.O. Drawer 340  
Beaux Bridge, LA 70517

Elkhart Telephone Company  
P.O. Box 817  
Elkhart, KS 67950-0817

Chillicothe Telephone Company  
68 East Main Street  
P.O. Box 480  
Chillicothe, OH 45601-0647

Farmers Telephone Cooperative, Inc.  
180 North McCurdy Avenue  
P.O. Box 217  
Rainsville, AL 35986

Cincinnati Bell Telephone Company  
Room 310  
201 East Fourth Street  
P.O. Box 2301  
Cincinnati, OH 45202

Fidelity Telephone Company  
64 North Clark  
Sullivan, MO 63080

Citizens Utilities Companies  
High Ridge Park  
Stamford, CT 06905

Great Plains Communications, Inc.  
1626 Washington Street  
Blair, NE 68008

Hargray Telephone Company  
P.O. Box 5519  
Hilton Head Island, SC 29938

Mount Horeb Telephone Company  
200 East Main Street  
P.O. Box 65  
Mount Horeb, WI 53572

Illinois Consolidated Telephone  
Company  
121 South 17th Street  
Mattoon, IL 61938

Northwestern Indiana Telephone  
Company  
205 North Washington Street  
P.O. Box 67  
Hebron, IN 46341

La Fourche Telephone Company, Inc.  
P.O. Box 188  
La Rose, LA 70373

Pineland Telephone Cooperative  
P.O. Box 678  
Metter, GA 30439

Lufkin-Conroe Telephone Exchange  
P.O. Box 909  
Lufkin, TX 75901

Josephine S. Trubek  
Rochester Telephone Corporation  
180 South Clinton Avenue  
Rochester, NY 14646-0700

Millington Telephone Company, Inc.  
4880 Navy Road  
Drawer 429  
Millington, TN 38083

Roseville Telephone Company  
P.O. Box 969  
Roseville, CA 95661

Taconic Telephone Corporation  
Taconic Place  
Chatham, NY 12037

Warwick Valley Telephone Company  
Warwick Communications  
5506 Detroit Avenue  
Cleveland, OH 44102

Alan Y. Naftalin  
Charles R. Naftalin  
Koteen & Naftalin  
1150 Connecticut Avenue, N.W.  
Washington, DC 20036

Union Telephone Company  
P.O. Box 428  
Plain Dealing, LA 71064

Vista Telephone Company  
14450 Burnhaven Drive  
Burnsville, MN 55337

Vista-United Telecommunications  
P.O. Box 10180  
Lake Buena, FL 32830-0180